



AF #12/10001
3288/86

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant/
Real Party in Interest : LACHANCE, CAROL STONEBROOK
Serial Number : 09/977,125
Filed : 10/21/2001
For : THERAPEUTIC PAD SYSTEM FOR APPLYING
A COOLANT TO AN AFFECTED BODY PART
Examiner : SCHOPFER, KENNETH G.
Group Art Unit : 3739
ATTORNEY DOCKET : LD30/01

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TECHNOLOGY CENTER R3700

MAIL STOP: APPEAL BRIEF - PATENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICANT'S APPEAL BRIEF
(Submitted in Triplicate)

This is an appeal from the Examiner's Final Rejection of
June 6, 2003.

REAL PARTY IN INTEREST

The real party in interest in this appeal is applicant Carol
Stonebrook Lachance.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which will
directly affect, or be directly affected by, or have a bearing
on, the decision in the pending appeal.

STATUS OF THE CLAIM

The status of the claims in this application is:

A. TOTAL NUMBER OF CLAIMS IN APPLICATION: Claims originally filed in this application are:

Claims 1 - 13.

B. STATUS OF ALL THE CLAIMS.

1. Claims canceled: None.
2. Claims withdrawn from consideration but not canceled: None.
3. Claims pending: Claims 1 through 13.
4. Claims allowed: None.
5. Claims rejected: Claims 1 through 13.
6. Allowable Claims: None.

STATUS OF AMENDMENTS

A First Office Action issued November 5, 2002, which rejected Claim 1 under 35 U.S.C. 112, second paragraph, and Claims 1 through 13 under 35 U.S.C. 103(a).

In response to the rejections cited above, Applicant filed an amendment which amended Claim 1. This amendment was fully responsive to the Examiner's objections and rejections. The substance of the response to the office action was directed to the differences between the cited prior art and the present invention.

A Final Office Action issued June 03, 2003, rejecting Claims 1 through 13 under 35 U.S.C. 103(a). Claims 1 - 5 were rejected under 35 U.S.C. 103(a).

In response to the Final Office Action, an amendment was filed June 3, 2003, in which Claims 4 and 7 - 13 were canceled. The body of the response was directed toward distinguishing the present invention from the prior art.

The Examiner mailed an Advisory Action on August 5, 2003, which indicated that the proposed Amendment after Final mailed June 3, 2003, would not be entered.

A Notice of Appeal was filed on October 1, 2003.

SUMMARY OF THE INVENTION

The invented device is a therapeutic pad system 10 that is comprised of a plurality of components. Such components in their broadest context include an ice patch, a jacket, and decorative indicia. Such components are individually configured and correlated with respect to each other so as to attain the desired objective.

First provided is an ice patch 14. The ice patch has a generally disc-shaped configuration with a diameter of about 3.5 inches. The patch has a circular first wall 16 and a circular generally parallel second wall 18 fabricated of a plastic-vinyl material. The first and second walls are coupled about their peripheries to form a space there between. A non-solid gel 20 which is capable of being frozen, thawed and re-frozen a plurality of times is located within the space. Printed indicia 22 in the form of a fruit or vegetable is provided on the exterior surface of one wall.

A jacket 24 fabricated of a cloth material is next provided. The jacket has a generally disc shaped configuration with a diameter of about 4 inches. The jacket has an interior panel 26 and an exterior panel 28. The interior panel and the exterior panel form a pocket 30 there between. Common stitching 32 is provided approximately over the lower two thirds of the jacket. The upper one-third forms an opening 34 for the movement of the ice patch to and from the pocket. The exterior panel is fabricated of a circular disc 36 of a cloth lining interiorly and a circular disc 40 of felt externally. The interior panel is fabricated of a mixture of natural and/or synthetic fiber staples, preferably Pellon. The internal diameter is slightly larger than the external diameter of the ice patch.

Decorative indicia 42 is provided. The indicia comprises two oval felt ears 44, a round felt nose 46, two round cloth eyes 48 of liquid paint, and a mouth 50 of liquid paint. The indicia is coupled exteriorly to the exterior panel of the jacket.

Next provided is a carrying case 52. The carry case is fabricated of a heavy cloth material. The carrying case has a forward wall 54 and an integral rearward wall 56 coupled at their side edges. The rearward wall extends into a flap 58. The flap has a generally rectilinear configuration with radially concentric edges 60. The forward and rearward walls form a pocket there within with a line of stitching 62 parallel with the

side edges to form two pockets for receiving two jackets, each with an ice patch.

Lastly, a tie is provided. The tie is fabricated of flexible material having a length of between about 12 and 24 inches. The tie is coupled at its center to the outer surface of the rearward wall to hold the flap to the carrying case when tied and to allow access to the jackets and ice patches when untied.

In alternate embodiments of the invention, the indicia on the jacket may be a volley ball 68, a tennis ball 70, a hockey stick 72, a baseball 74, a flower 78 composed of felt pedals 80, or a lady bug 82 with liquid ink spots 84 and felt legs 86.

ISSUE

Whether the rejections of Claims 1, 2, 3, 5, and 6 under 35 U.S.C. 103(a) is proper base on the cited prior art of Allen (USPN 5,507,794) and Thomas et al (USPN 5,215,080).

GROUPING OF CLAIMS

Claims 1, 2, 3, 5, and 6 are the only Claims under consideration and may be considered together.

ARGUMENT

In both the First Non-Final Office Action rejection and the Final Office Action rejection, the Examiner relied on the prior art of Allen (USPN 5,507,794) and Thomas et al (USPN 5,215,080).

Allen '794 teaches a therapeutic support garment that is wrapped around a user's torso and coupled to itself with a hook and loop attachment means (Column 3, Lines 15-26). The Allen

device is described as having "breast pouches 20" (Column 3, Lines 33-35). "Gel packs 40" (Column 4, Line 26) are placed in the breast pouches so that the user may apply heat or cold to the user's breast(s). In an alternate embodiment "the breast pouches 50 may be permanently positioned and secured on the support member 10" (Column 4, Lines 36-38).

The present invention is described herein above. The present invention is, in essence, a cold pack that has an optional cover and a carry case. The cold pack may be placed over an eye with or without the decorative cover. The decorative cover makes the use of the cold pack more appealing to young children. The cold pack, by itself, may be place over an eye and held in place by gravity. Unlike the Allen invention, which uses an around-the-torso strap to hold the cold pack in place, the present invention uses gravity to hold the cold pack in place. Also, unlike Allen, the cold packs have decorative indicia as well.

not claimed

The Thomas '080 patent, like the Allen patent, uses a hook and loop attachment means to couple straps together so as to allow the user to encompass an extremity with the straps, to keep the device in place. Thomas does not use gravity to maintain the cold pack in place. Instead, Thomas uses "[a]n insulating layer 18 of polychoroprene wetsuit rubber... (Column 3, Lines 62-64). "The sheet of wetsuit rubber also has two straps 12a and 12b affixed to it at one end of the strips 16a and 16b." (Column 3, Lines 67-68). The present invention does not use any affixing

straps to hold the cold pack in place. The Thomas patent teaches the presence of multiple compartments to hold bags of ice. Thomas teaches away from the present invention, as does the Allen Patent. Both use affixing straps, which is contrary to the teachings of the present application, which uses gravity and no straps.

Examiner has picked the aspects of the Thomas and Allen inventions which coincide with the teachings of the present invention, such as an ice pack and a compartment. While Allen teaches an ice pack and a pouch to contain the ice, Allen also teaches the support straps to hold the ice pack in place and in contact with the user's body. The Examiner overlooks the structures taught by Allen which, without them, Allen would not be effective, vis a' vie the straps having a hook and loop means. Allen also does not teach an ice pack having a decorative indicia.

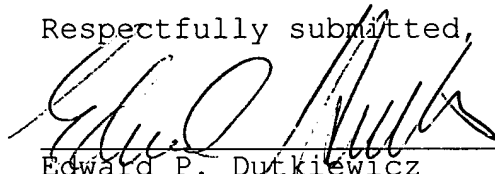
The same arguments can be extended to the Thomas '080' patent, in that the straps having a hook and loop means are necessary for his invention to work. The present invention does not need any affixing straps or hook and loop means. The present invention rests on a user's eye, and is held in place by gravity, and nothing more.

CONCLUSION

It is requested that the rejection of the claims be withdrawn and the present application be allowed and passed to issue.

Reconsideration, a reversal of the Examiner's position, and a Notice of Allowance are requested.

Respectfully submitted,



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that the foregoing Appeal Brief is being deposited in triplicate with the U.S. Postal Service in an envelope with sufficient postage attached thereto for First Class Mail addressed to: MAIL STOP: APPEAL BRIEF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this the 21st day of November, 2003.



Jeanne M. Carrell



CLAIMS

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What is claimed as being new and desired to be protected by
LETTERS PATENT of the United States is as follows:

1. A therapeutic pad system for the application of a coolant to an affected body part of a user to reduce pain, swelling and puffiness in a safe and efficient manner comprising, in combination:

an ice patch having a generally disc-shaped configuration with a diameter of about 3.5 inches, the patch having a circular first wall and a circular generally parallel second wall fabricated of a plastic-vinyl material with the first and second walls coupled about their peripheries to form a space there between and with a non-solid gel which is capable of being frozen, thawed and re-frozen a plurality of times located within the space, the exterior surface of one wall having printed indicia in the form of a fruit or vegetable;

a jacket fabricated of a cloth material and having a generally disc shaped configuration with a diameter of about 4 inches with the jacket having an interior panel and an exterior panel with the interior panel and the exterior panel forming a pocket there between with common stitching approximately over the lower two thirds of the jacket and with the upper one-third forming an opening for the movement of the ice patch to and from the pocket, the exterior panel being fabricated of a circular disc of a cloth lining interiorly and a circular disc of felt externally, the interior panel being fabricated of a mixture of

fiber staples having an internal diameter slightly larger than the external diameter of the ice patch;

decorative indicia comprising two oval felt ears and a round felt nose and two round cloth eyes of liquid paint and a mouth of liquid paint, the indicia coupled exteriorly to the exterior panel of the jacket;

a carrying case fabricated of a heavy cloth material having a forward wall and an integral rearward wall coupled at their side edges, the rearward wall extending into a flap, the flap having a generally rectilinear configuration with radially concentric edges, the forward and rearward walls forming a pocket there within with a line of stitching parallel with the side edges to form two pockets for receiving two jackets, each with an ice patch; and

a tie fabricated of flexible material having a length of between about 12 and 24 inches, the tie being coupled at its center to the outer surface of the rearward wall to hold the flap to the carrying case when tied and to allow access to the jackets and ice patches when untied.

2. A therapeutic pad system comprising:

an ice patch having a generally disc-shaped configuration, the patch having a circular first wall and a circular generally parallel second wall fabricated of a plastic-vinyl material, a non-solid gel which is capable of being frozen, thawed and re-frozen a plurality of times located within the space between the walls;

a jacket fabricated of a cloth material and having a generally disc shaped configuration with an interior panel and an exterior panel and a pocket there between for receiving the ice patch and including common stitching approximately over the lower two-thirds of the jacket and with the upper one-third forming an opening; and

decorative indicia coupled to the exterior panel of the jacket.

3. The system as set forth in claim 2 and further including:

a carrying case fabricated of a heavy cloth material having a forward wall and an integral rearward wall coupled at their side edges, the rearward wall extending into a flap, the flap having a generally rectilinear configuration with radially cornered edges, the forward and rearward walls forming a pocket there within with a line of stitching parallel with the side edges to form two pockets for receiving two jackets, each with an ice patch.

4. The system as set forth in claim 3 and further including a tie fabricated of flexible material having a length of between about 12 and 24 inches, the tie being coupled at its center to the outer surface of the rearward wall to hold the flap to the carrying case when tied and to allow access to the jackets and ice patches when untied.

5. The system as set forth in claim 2 and further including indicia on one surface of the ice patch.

6. The system as set forth in claim 2 wherein the interior panel of the jacket is fabricated of Pellon.

7. The system as set forth in claim 2 wherein the indicia on the jacket is a teddy bear.

8. The system as set forth in claim 2 wherein the indicia on the jacket is a volley ball.

9. The system as set forth in claim 2 wherein the indicia on the jacket is a tennis ball.

10. The system as set forth in claim 2 wherein the indicia on the jacket is a hockey stick.

11. The system as set forth in claim 2 wherein the indicia on the jacket is a baseball.

12. The system as set forth in claim 2 wherein the indicia on the jacket is a flower composed of felt pedals.

13. The system as set forth in claim 2 wherein the indicia on the jacket is a lady bug with liquid ink spots and felt legs.